

BiH DAYTON PROJECT



RS's 21st Report to the UN Security Council

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Republika Srpska has delivered its [21st Report to the UN Security Council](#). Below is the report's introduction and executive summary.

Republika Srpska's 21st Report to the UN Security Council

Introduction and Executive Summary

The period since Republika Srpska's 20th Report to the UN Security Council in November 2018 has been marked by divergent reactions to the results of October's free and fair elections.

The largest Bosniak party, the SDA, has reacted poorly to its disappointment in the election results, becoming a greater obstacle to democracy, peace, stability, and the Dayton Accords, particularly the BiH Constitution. Since the elections, the SDA has done little but obstruct implementation of the election results, undermine the functioning of public institutions, and politically attack Republika Srpska. A political blockade by the SDA has prevented BiH from forming the new Council of Ministers, even though more than six months have passed since the elections.

At the Federation level, the SDA challenged the BiH Central Election Commission's implementation of the election results, delaying the formation of the Federation Parliament until 20 February. The Federation has failed to form a government, as have some of its ten cantons. Politics in the Federation are in crisis, in part as a result of the election of Željko Komšić as the "Croat" member of the BiH Presidency. Komšić is a nominally Croat politician who advocates the SDA and Bosniak political agenda and has almost no support among Croats. Bosniak politicians disenfranchised Croat voters by encouraging Bosniaks to vote for Komšić instead of a candidate for the Bosniak seat in the Presidency. This gave Bosniaks two seats on the Presidency and the Croats zero.

In January, the SDA announced a destabilizing and legally groundless initiative to challenge Republika Srpska's name. This threat is as serious affront to Republika Srpska—which is one of the two Entities that comprise BiH and a signatory to the Dayton Accords—as well as to the citizens of Republika Srpska, particularly the Serb Constituent People. The initiative is meant to delegitimize the existence of Republika Srpska.

Reactions to the election in Republika Srpska have been very different. After the clear-cut victory of the coalition led by the SNSD party, Republika Srpska quickly formed a new government, which set to work implementing its mandate. Duly elected officials from Republika Srpska are pressing forward in support of a BiH based on the Dayton Constitution.

The new chairman of the BiH Presidency, Milorad Dodik has been pursuing the cause of BiH's EU integration and seeking common ground with his colleagues in the Presidency. In February, Dodik said, "There are different ways in which relations between the three constituent peoples in Bosnia could develop. They could spark progress or stagnation, or we could try to reach a basic consensus and a functional agreement which would suit everyone." Dodik further said, "We should end the unitarization and secession talks. It's only natural that we accept reality and try to make something out of it." Similarly, in April, Dodik said, "I am for agreement in BiH. No one should negate anyone, neither we Serbs Bosnia nor Bosniaks Republika Srpska nor Croats Bosnia and Republika Srpska nor we all the

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Croats." Unfortunately, Dodik's efforts at developing consensus have been hampered by the unlawful and divisive actions of the SDA.

Below is a brief summary of each section of this report.

I. The SDA is unlawfully blocking implementation of BiH's 2018 election results.

More than six months after BiH's 2018 elections, the SDA is blocking implementation of the election results by setting unrealistic conditions for the formation of a new Council of Ministers. The main purpose of the blockade is to keep members of the Serb coalition that won the elections out of BiH-level ministries and offices, negating the choices of the RS electorate. The SDA's blockade, which casts aside the choices of BiH voters, must end, especially because it is undermining BiH's efforts at EU integration and economic reform.

II. RS political parties are united in supporting continued cooperation with NATO but not NATO membership.

BiH lacks the consensus among its Constituent Peoples necessary for a decision as momentous as joining a military alliance. Republika Srpska supports BiH cooperation with NATO, but it has also made clear its commitment to BiH's military neutrality. Republika Srpska is well justified in taking positions on such issues, especially because the BiH Constitution gives the RS National Assembly a key role in treaty ratification. EU officials have rejected the notion that progress toward NATO membership is linked to EU integration. Moreover, NATO membership would require a major increase in military spending that BiH cannot afford. In addition, the proposed Annual National Program for NATO calls for a centralization of competencies from the Entities to the BiH level in violation of the BiH Constitution.

III. Republika Srpska is committed to BiH's EU integration; the SDA is inhibiting it.

Republika Srpska remains committed to supporting BiH's integration to the EU in every way possible. EU membership is a goal toward which BiH's disparate parties should be able to work cooperatively. Unfortunately, the SDA's blockade of the Council of Ministers' formation has frozen BiH's progress toward the EU.

IV. The SDA's provocative initiative to challenge Republika Srpska's name is a direct challenge to Republika Srpska's legitimacy and must be condemned.

The SDA recently announced a legally baseless and politically destabilizing effort to challenge Republika Srpska's name before the BiH Constitutional Court. The initiative is a challenge to the BiH Constitution itself, which repeatedly recognizes Republika Srpska by name. Moreover, nothing about Republika Srpska's name violates human rights instruments. The SDA's initiative is an affront to the citizens of Republika Srpska and is politically destabilizing because it challenges Republika Srpska's legitimacy to exist, striking at the heart of the Dayton Accords.

V. The BiH Constitutional Court's new decision on RS Day is a political act inconsistent with the practice of EU states and European law.

A recent decision of the BiH Constitutional Court claims that Republika Srpska's purely secular and voluntary holiday marking the date of its creation violates the BiH Constitution, in conjunction with anti-discrimination provisions of human rights conventions. But the claim that it is discriminatory to mark days of special significance to certain religious or ethnic groups is unsupported in European law.

VI. BiH Institutions are not meeting their responsibility to keep BiH secure, which seriously increases the risk of terrorism.

The migrant crisis in BiH has been deepening as BiH border police have failed to slow the surge of migration into the country. The migrant crisis is a security crisis, especially because terrorists are entering BiH among the migrants. This is especially worrisome because BiH institutions are not taking treat the jihadist threat with the seriousness it requires. This raises the risk of terrorist acts within BiH and in other European countries.

VII. The independent commissions on Sarajevo and Srebrenica are part of the search for historical truth.

Republika Srpska has sponsored two commissions composed of independent experts from around the world to examine suffering in Sarajevo and Srebrenica during BiH's civil war. More than 15 years ago, the BiH Human Rights Chamber ordered the Federation, BiH's other Entity, to establish a commission on the suffering of Sarajevo's Serbs from 1991 to 1995. The Federation failed to establish the commission as ordered, so Republika Srpska is sponsoring the commission today. Republika Srpska is also establishing a commission to examine the suffering of all peoples in and around Srebrenica between 1992 and 1995. The commission is not an attempt to deny that large-scale atrocities were committed against Bosniaks in Srebrenica. Instead, it is a search for truth about crimes in Srebrenica—regardless of the ethnicity of the victims—during the entire war.

VIII. Republika Srpska is committed to the Dayton Accords and BiH's full sovereignty.

Republika Srpska remains committed to the Dayton Accords and insists that the BiH Constitution, Annex 4 of the Accords, be faithfully implemented. Republika Srpska is also committed to BiH's full sovereignty, which means the Office of the High Representative and the presence of foreign judges on the BiH Constitutional Court must be eliminated.

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Republika Srpska's 21st Report to the UN Security Council

April 2019

Republika Srpska's 21st Report to the UN Security Council

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At the Federation level, the SDA challenged the BiH Central Election Commission's implementation of the election results, delaying the formation of the Federation Parliament until 20 February.¹ The Federation has failed to form a government, as have some of its ten cantons. Politics in the Federation are in crisis, in part as a result of the election of Željko Komšić as the "Croat" member of the BiH Presidency. Komšić is a nominally Croat politician who advocates the SDA and Bosniak political agenda and has almost no support among Croats. Bosniak politicians disenfranchised Croat voters by encouraging Bosniaks to vote for Komšić instead of a candidate for the Bosniak seat in the Presidency. This gave Bosniaks two seats on the Presidency and the Croats zero.

In January, the SDA announced a destabilizing and legally groundless initiative to challenge Republika Srpska's name. This threat is as serious affront to Republika Srpska—which is one of the two Entities that comprise BiH and a signatory to the Dayton Accords—as well as to the citizens of Republika Srpska, particularly the Serb Constituent People. The initiative is meant to delegitimize the existence of Republika Srpska.

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¹ Mladen Lakic, *Bosnia's Federation Entity Finally Forms New Parliament*, BALKAN INSIGHT, 20 Feb. 2019.

² *Bosnian Serb leader: We need to support each other and make progress on EU path*, N1, 8 Feb. 2019.

Republika Srpska nor we all the Croats.”³ Unfortunately, Dodik’s efforts at developing consensus have been hampered by the unlawful and divisive actions of the SDA.

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³ *BiH Needs Internal Agreement, Not Mutual Negation*, SRNA, 5 Apr. 2019.

V. The BiH Constitutional Court's new decision on RS Day is a political act inconsistent with the practice of EU states and European law.

A recent decision of the BiH Constitutional Court claims that Republika Srpska's purely secular and voluntary holiday marking the date of its creation violates the BiH Constitution, in conjunction with anti-discrimination provisions of human rights conventions. But the claim that it is discriminatory to mark days of special significance to certain religious or ethnic groups is unsupported in European law.

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Republika Srpska remains committed to the Dayton Accords and insists that the BiH Constitution, Annex 4 of the Accords, be faithfully implemented. Republika Srpska is also committed to BiH's full sovereignty, which means the Office of the High Representative and the presence of foreign judges on the BiH Constitutional Court must be eliminated.

Republika Srpska's 21st Report to the UN Security Council

I. The SDA is unlawfully blocking implementation of BiH's 2018 election results.

1. More than six months after BiH's 2018 elections, BiH still has no new Council of Ministers because of a political blockade by the SDA party, led by the Bosniak member of the BiH Presidency, Šefik Džaferović. The division of ministries among the parties has been settled, and it has been agreed that the next Chairman of the Council of Ministers will come from the SNSD—the Serb party that won the most votes in the 2018 elections. But the SDA is preventing formation of the Council of Ministers by making unrealistic demands in order to prevent the Serb parties who won the elections from taking office at the BiH level.

A. The SDA is trying to keep the Serb parties who won the 2018 elections out of office at the BiH level.

2. The main reason for the SDA blockade is to keep the Serb parties that won the 2018 elections out of power at the BiH level. This is a profoundly antidemocratic attempt to disregard the choices of the RS electorate.

3. One reason for the SDA to keep the SNSD-led coalition out of office at the BiH level may be to avoid scrutiny of destabilizing and illegal activities by the SDA. This month, Presidency Chairman Dodik called for an investigation into whether the intelligence service and SDA security commission have been registering able-bodied Bosniaks and whether there is an illegal plan of weapons and ammunition production at SDA-controlled factories. Dodik said that he has received information that “[r]epresentatives of the intelligence community and the SDA security commission came [to Mostar] to organize the registration of all able-bodied Bosniaks, to check where they were and what they were doing during the war, and to see how to train those who did not undergo military training in case of need.”⁴ Dodik also said there is information that some SDA-controlled weapons and ammunition factories have increased production unlawfully.⁵

4. It should be recalled that in April 2018, SDA President Bakir Izetbegovic said, “Bosniaks must never be weak again” and boasted about the heavy weapons the Bosniaks are producing.⁶ Izetbegovic said:

We will produce a moving howitzer and we are already working on it. Also, we will create a mobile transporter, we have made a rifle, we will make the good tactical 12.7, multipurpose throwers of all possible calibre and all possible ammunition for it, and drones. So, we will be like that little man who is not big, but he is angry and well-armed, and everyone will have to think carefully whether they

⁴ *Check If Arms Production Increased Under SDA Control*, SRNA, 9 Apr. 2019.

⁵ *Id.*

⁶ *Urgent Meeting Not Held for Lack Of Quorum*, SRNA, 20 Apr. 2018.

should get into conflict with him. They will never be able to knock on our doors again, without us having nothing to answer it with.⁷

5. Similarly, Federation Prime Minister Fadil Novalić, a member of the SDA, said at an SDA meeting on 24 March 2018:

You have witnessed that defense industry does not serve only export purposes, it increases the security of our country at the time when Serbia and Croatia have been arming themselves. During this term of office, we have almost finalised the production of self-propelled howitzers 155 mm, the production of a rifle, we have new RPGs. Our shells can fly 42 instead of 20 kilometers. We are aiming at 50 kilometers. We are constructing a gunpowder factory. I think that combat personnel carriers will leave our factories by the end of the year. We have dramatically strengthened our defense industry, not only for the purpose of export.⁸

B. The SDA is unreasonably demanding that Serbs to support NATO membership as a precondition to forming the Council of Ministers.

6. The ostensible reason for the SDA's blockade is the party's insistence that the next chairman of the Council of Ministers support BiH's membership in NATO. The SDA demands that the nominee support adoption of the proposed Annual National Program (ANP), a step that would activate BiH's Membership Action Plan (MAP) for the alliance. The legal deadline for appointment of the Council of Ministers has passed but, ignoring this law, Džaferović is insisting that the SDA's demands be met before the Council is appointed.

7. The SDA's hostage-taking strategy will not work. All major parties in Republika Srpska oppose BiH's accession to NATO, and the RS National Assembly made RS policy clear in 2017 with a resolution on military neutrality. RS representatives at the BiH level will not contravene this clear policy.

C. The SDA's blockade must end.

8. It is essential that the SDA lift its blockade so that the Council of Ministers can be formed and BiH can move forward.

9. The SDA's blockade of the new Council of Ministers freezes BiH's progress toward EU membership. The caretaker ministers in place lack the legitimacy and legislative support necessary to enact and implement reforms necessary for EU integration.

10. In a visit to BiH in March, EU Enlargement Commissioner Hahn emphasized that it is important for BiH's Council of Ministers to be formed quickly in order for reforms to resume.⁹

⁷ *Izetbegović threatens with heavy weapons*, INDEPENDENT BALKAN NEWS AGENCY, 18 Apr. 2018.

⁸ *Atmosfera straha do izbora*, N1 TV, 27 Mar. 2018.

⁹ *EU official urges BiH to form government, implement reforms*, XINHUA, 29 Mar. 2019.

Hahn said:

It is our ambition to publish the opinion [on BiH's potential candidate status] by the end of May under the condition that government is formed not only at the level of Bosnia and Herzegovina but also at the level of Federation BiH. We need that because we have to have a partner on the other side, we must have authorities that will keep working on these questions.¹⁰

11. The SDA's blockade of Council of Ministers formation has also caused BiH to be suspended from the Council of Europe Parliamentary Assembly because of BiH's failure to appoint its new delegates within six months of elections.

12. The SDA's blockade also undermines economic growth. As BiH's Central Bank governor, Senad Softic, has pointed out, BiH's failure to form its Council of Ministers undermines structural reforms that are needed to improve economic growth, and this affects BiH's rating and investment. Softic emphasized, "It is important to form a government as soon as possible to resume projects that have been halted and which are a precondition for the growth."¹¹ The blockade is also undermining efforts to respond to the migrant crisis.

13. The blockade has led to some absurd and unconstitutional situations. Five caretaker ministers from the previous electoral period have been sworn in as members of new parliaments. The caretaker chairman of the Council of Ministers is simultaneously the vice-chairman of the BiH House of Representatives. This violates the principle of separation of powers, which is fundamental to the rule of law under which Article 2 of the Constitution requires BiH to operate. The BiH Constitutional Court has recognized that the "internal system of Bosnia and Herzegovina is founded, inter alia, on the principle of separation of powers which is a crucial element of the concept of the rule of law"¹² The Constitutional Court has also held that separation of powers includes a "prohibition of mutual interference."¹³ The simultaneous holding of BiH executive and legislative positions obviously violates this prohibition.

14. Republika Srpska is not alone in emphasizing the need to end the blockade. The president of BiH's largest Croat party, Dragan Čović, has joined Milorad Dodik, the Serb member of the BiH Presidency, in calling on Bosniak representatives to form the new Council of Ministers.¹⁴ Čović criticized the "evident tactics by the Bosniak politicians to make sure nothing happens in relation to the formation of State-level authorities."¹⁵

15. The SDA's blockade of the new Council of Ministers blatantly disregards the choices of

¹⁰ Mladen Dragojlovic, *Johannes Hahn: Opinion on BiH candidate status to be announced by the end of May*, INDEPENDENT BALKAN NEWS AGENCY, 28 Mar. 2019.

¹¹ Daria Sito-Sucic, *Bosnia's govt. formation delay may hit growth-c.bank governor*, REUTERS, 11 Feb. 2019.

¹² Case U-7/12, Decision on Admissibility and Merits, BiH Constitutional Court, 30 Jan. 2013, para. 28.

¹³ Case U-20/16, Decision on Admissibility and Merits, BiH Constitutional Court, 30 Mar. 2017, para. 23.

¹⁴ *Bosnian Serb and Croat leaders agree - Bosnia lagging because of Bosniaks*, N1, 10 Feb. 2019.

¹⁵ Čović: *I Respect Serbian Authorities' View on NATO Integration*, SRNA, 9 Apr. 2019.

the electorate and prevents their implementation. It leaves in place ineffectual caretaker ministers without democratic legitimacy. To prolong the blockade further is to continue a quiet coup against the office holders chosen by BiH voters.

II. RS political parties are united in supporting continued cooperation with NATO but not NATO membership.

A. There is no required consensus for BiH to seek NATO membership.

16. Trying to force BiH down the road to NATO membership is futile and divisive because there is no required consensus among BiH's Entities or Constituent Peoples that BiH should join the alliance. A consensus is essential for BiH to enter into a commitment of such gravity, and Republika Srpska's and BiH's Serb Constituent People overwhelmingly oppose NATO membership.

17. BiH's efforts should be focused on goals for which there is consensus among Entities and Constituent Peoples, such as EU membership.

1. Republika Srpska supports neutrality, but also BiH cooperation with NATO.

18. On 18 October 2017, the RS National Assembly approved a resolution proclaiming military neutrality "in relation to the existing military alliances until a possible referendum to make a final decision on the issue is held."

19. Like Austria, Sweden, Finland, and Ireland, Republika Srpska is not anti-NATO but pro-neutrality. Republika Srpska supports BiH's continued cooperation with NATO, including through the Partnership for Peace program, which BiH joined in 2006, and through BiH's Individual Partnership Action Plan (IPAP), which was first agreed with NATO in 2008.

2. Republika Srpska, which has a constitutional role in treaty ratification, has a right to adopt positions with respect to NATO.

20. The RS was well justified in proclaiming its position—and would be well justified in holding a referendum—on the issue of BiH's potential membership in NATO. The RS position is clearly consistent with the rights Republika Srpska enjoys under the Constitution and the Dayton Accords.

21. Accession to NATO would require BiH to ratify a protocol to the North Atlantic Treaty of 1949,¹⁶ and the BiH Constitution explicitly gives the RS National Assembly a key role in the ratification of treaties. Under the BiH Constitution, the BiH Presidency negotiates treaties and ratifies them with the consent of the BiH Parliamentary Assembly.¹⁷ However, the BiH Constitution provides:

¹⁶ See, e.g., Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro, 19 May 2016.

¹⁷ BiH Constitution, Art. V-3(d).

A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected . . . Such a Decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory¹⁸

22. If the BiH Presidency were to attempt to ratify, without consent of all three members of the Presidency, including the Serb member, a protocol to the North Atlantic Treaty—or any other treaty—the question of ratification could well come directly before the RS National Assembly. It is appropriate for the RS National Assembly to pass resolutions laying out its convictions on issues of importance to RS citizens and to solicit those citizens’ views through referenda. This is especially the case with issues, such as potential treaties, that may come before the RS National Assembly.

B. EU officials have rejected the idea of a link between EU membership and NATO membership.

23. Advocates of NATO integration have claimed that activation of BiH’s MAP is a precondition for progress toward the EU. EU officials, however, have made clear that NATO is not an issue for BiH’s EU integration. In any event, there is no basis for linking BiH’s NATO integration with progress toward EU membership. NATO membership—or the intention to join the alliance—has never been a requirement for EU membership. Five EU members (Austria, Finland, Ireland, Malta, and Sweden) are not NATO members. NATO membership, meanwhile, does not ensure EU membership. Five European NATO members (Norway, Montenegro, Iceland, Albania, and Turkey) are not EU members.

24. Moreover, NATO membership or the intention to join the alliance is not a condition for progress toward accession of new EU members. Since 2014, the EU has been conducting accession negotiations with Serbia with the full knowledge that Serbia has no MAP and no intention of joining NATO.

C. NATO membership would require a major increase in BiH military spending.

25. Because NATO’s agreed target for defense spending among members is 2 percent of GDP, NATO membership would require a major increase in defense spending. At a March 2017 NATO-sponsored seminar in Sarajevo, then-MP Šefik Džaferović said that BiH is “allocating less than 1% of its GNP to defence, and much of this is spent on personnel. Greater defence outlays will eventually be required.”¹⁹ BiH simply cannot afford this extra military expenditure at a time when budgets are pressed thin. The increase in military spending required by NATO membership would require damaging tax increases or painful spending cuts.

¹⁸ BiH Constitution, Art. V-2(d).

¹⁹ Report, The Western Balkans: Transition, Challenges, European Aspirations and Links to the MENA Region, NATO Parliamentary Assembly, 21 Apr. 2017.

D. The proposed Annual National Program for NATO calls for the transfer of competencies to the BiH level in violation of the BiH Constitution.

26. Not only have the Bosniaks sought to utilize the issue of NATO membership, and the adoption of the ANP, as a pretext to prevent the formation of the BiH Council of Ministers, but they are also seeking to use the ANP to unlawfully centralize authority at the BiH level contrary to the competencies of BiH and the Entities under the BiH Constitution. For example, the proposed ANP provides, “BiH will pay special attention to the continuation of the NATO standards implementation process, as well as continue the reform of the security sector, *in particular the police reform.*”

27. The police reform to which the proposed ANP refers was a failed attempt by the High Representative to centralize at the BiH level all authority over police. This was contrary to the BiH Constitution’s list of BiH-level competencies. That list does not include authority over police, and the Constitution further provides, “All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.”²⁰

28. Former OHR Attorney Matthew Parish has written:

Police reform was a plan, pushed by OHR, to bring all the different police forces in Bosnia and Herzegovina (Federation cantons, Republika Srpska and District) under a single state-level command structure. The stated rationale for police reform was that European Union accession requires police forces to be structured like this. This was an absurd assertion. The structure of police forces is different in every European Union country.

29. In a 2008 analysis of the police reform effort in BiH, Thomas Muehlmann, who is now chief of staff of the EU Rule of Law Mission in Kosovo, wrote:

Police reform was not a technical undertaking, merely about improving security and policing; it also meant making decisive changes in the political and constitutional landscape of Bosnia. The way that implementation was designed by the international community meant that it would be a clear threat to the territorial integrity of the Republika Srpska entity.²¹

30. Republika Srpska emphasizes that the BiH police reform process has long been over, and that the revival of that process foreseen in the proposed ANP will not take place.

III. Republika Srpska is committed to BiH’s EU integration; the SDA is inhibiting it.

31. Republika Srpska continues to do everything it can to support BiH’s integration into the

²⁰ BiH Constitution, Art. III(3)(a).

²¹ Thomas Muehlmann, *Police Restructuring in Bosnia-Herzegovina: Problems of Internationally-led Security Sector Reform*, 2 JOURNAL OF INTERVENTION AND STATEBUILDING 1 (5 Feb. 2008).

EU.

32. At a 4 March 2019 meeting in Brussels with European Commissioners Federica Mogherini and Johannes Hahn, BiH Presidency Chairman Milorad Dodik submitted BiH's the answers to more than 600 additional questions that the EU had posed after BiH's answers to its original questionnaire. The European Commission will now take those answers into account in forming an opinion on whether the EU should grant BiH candidate status. However, the Commission has made clear that there will be no positive opinion on BiH's candidate status until governments are formed at all levels in BiH.²² As explained above, the SDA is blockading the formation of the BiH Council of Ministers, and that blockade has undermined BiH's ability to enact and implement reforms for EU integration.

33. All of the major parties in BiH support the country's EU integration. Thus, the parties should work cooperatively together toward this shared goal. It is regrettable that a political blockade over an unrelated issue has frozen further progress toward the EU at the BiH level.

IV. The SDA's provocative initiative to challenge Republika Srpska's name is a direct challenge to Republika Srpska's legitimacy and must be condemned.

34. In January 2019, the Bosniak SDA party took another provocative and destabilizing political step aimed at undermining the Constitutional status of Republika Srpska when it announced that it will ask the BiH Constitutional Court to declare Republika Srpska's name unconstitutional.²³ The initiative has no legal foundation.

A. The SDA's initiative is in direct conflict with the words of the BiH Constitution, and Republika Srpska's name violates no applicable human rights agreement.

35. The BiH Constitution provides in Article I, "Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska." It is absurd to argue that the Constitution, in its fundamental article defining Bosnia and Herzegovina, violates the Constitution. The text of the Constitution goes on to use the name Republika Srpska in ten other places, including when it bestows powers on the National Assembly of Republika Srpska. Moreover, the Constitution is a central element of a major international agreement, the Dayton Peace Accords, to which Republika Srpska—by that name—is a party.

36. Nor does the name Republika Srpska violate human rights instruments. If this were so, the names of most countries in Europe would violate human rights. It is a common and accepted practice for states and political subdivisions to carry the names of their largest ethnic group. Most European states, such as Germany, France, Italy, Spain, and the Czech Republic, are named this way. Many European political subdivisions, such as England, Scotland, Catalonia, Basque Country, and Wallonia, are also named this way. There is nothing unusual about the way in which

²² *No EU Candidate status for Bosnia and Herzegovina without government formation*, EUROPEAN WESTERN BALKANS, 22 Jan. 2019.

²³ *SDA to challenge Republika Srpska entity's name before Constitutional Court*, N1, 23 Jan. 2019.

Republika Srpska is named.

37. The international community, including the ad-hoc Peace Implementation Council and the UN Security Council, has long recognized Republika Srpska—by its name—as one of the two Entities that make up Bosnia and Herzegovina.

B. The SDA's initiative is politically destabilizing.

38. The Dayton Accords have brought BiH more than 23 years of peace. The SDA's initiative is politically destabilizing because it challenges the very existence of Republika Srpska, striking at the heart of Dayton. The initiative is part of the SDA's unrelenting campaign to attack Republika Srpska's legitimacy. It is time that the SDA accept the Dayton settlement and Republika Srpska's right to exist.

C. Although the PIC Steering Board criticized the SDA's initiative, it responded in a way that shows its biased and unhelpful nature.

39. After the SDA announced its initiative, Russia's ambassador to BiH asked for a session of the Peace Implementation Council (PIC) Steering Board to discuss the initiative. The statement²⁴ that resulted from the meeting, is the latest example of the PIC's failure to act objectively to promote peace in BiH.

40. The PIC Steering Board criticized as "irresponsible and counterproductive" the SDA's initiative to ask the BiH Constitutional Court to abolish Republika Srpska's name in spite of the fact that, as the statement notes, "the names of the Entities are enshrined in the BiH Constitution."²⁵ According to the PIC statement, "Such initiatives undercut the building of trust among constituent peoples and their political representatives as a basis for much needed reconciliation in BiH."

41. At the same time, however, the PIC statement, using harsher language, "condemned" Serb reactions to the SDA's threat against Republika Srpska and also "condemned" a recent—unrelated—declaration by the Croatian People's Assembly. The PIC failed to characterize the SDA's maneuver as "anti-Dayton," despite the fact that it is an open assault on the Dayton order, which recognizes Republika Srpska by name. By pairing a tepid criticism of the SDA's initiative with harsher condemnations of Serbs and Croats, the PIC proved it has no wish to be a neutral observer of BiH and the implementation of Dayton. The PIC is incapable of properly laying blame with the Bosniaks, even in the case of a direct threat by the SDA to the Dayton Accords.

42. It is long past time that the PIC, which is an ad-hoc group with no legal basis in the Dayton Accords, be abolished.

D. The BiH Constitutional Court's "Constituent Peoples Decision" of 1 July 2000 in no way justifies the SDA's initiative.

43. The SDA party has argued that the BiH Constitutional Court's Constituent Peoples (CP)

²⁴ Russia abstained from the statement.

²⁵ Statement by the Ambassadors of the Steering Board of the Peace Implementation Council *, 29 Jan. 2019.

Decision supports the party's initiative to require Republika Srpska to change its name.²⁶ The CP Decision does no such thing. The Constitutional Court's orders in the CP Decision were quite narrow, and the reasoning of the decision does not remotely justify requiring Republika Srpska to change its name, which is enshrined in the BiH Constitution. Moreover, the reasoning of the decision that has been used to call for sweeping changes was actually rejected by a majority of the court.

V. The BiH Constitutional Court's new decision on RS Day is a political act inconsistent with the practice of EU states and European law.

44. The BiH Constitutional Court has yet again demonstrated how it has become an instrument of politics and why it lacks legitimacy among the citizens of Republika Srpska and BiH. On 29 March 2019, the court declared unconstitutional the current RS law concerning the holiday on which Republika Srpska celebrates the day of its founding, despite the fact that the law makes the holiday completely secular and voluntary. The case was brought by members of the RS Council of Peoples led by the SDA, which, as explained above, has waged an unrelenting campaign to attack Republika Srpska's legitimacy. The decision highlights the urgent need for reform of the court to restore the rule of law and confidence among BiH's Constituent Peoples.

45. There is no legally defensible basis for the Constitutional Court's decision. RS Day, which marks the anniversary of Republika Srpska's birth, is a celebration of Republika Srpska's existence—an existence the BiH Constitution, Annex 4 of the Dayton Accords, fully acknowledges and embraces.

46. The decision claims that the RS Law concerning RS Day violates "Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1.1 and Article 2.a) and c) of the International Convention for Elimination of All Forms of Racial Discrimination and Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Right and Fundamental Freedoms."

47. Article II(4) is an anti-discrimination provision similar to those found in many European constitutions. The Constitutional Court cites it in conjunction with general anti-discrimination provisions of the International Convention for Elimination of All Forms of Racial Discrimination and Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, both of which have been widely adopted in Europe.

48. Yet Republika Srpska is aware of no example in Europe—or anywhere else—of a public holiday being banned on the basis of such anti-discrimination rules. Countries throughout Europe celebrate public holidays that mark days of special significance to members of a religious or ethnic group—almost always the country or political subdivision's most populous one (Few European countries have public holidays for important feasts of Islam or other non-Christian religions, despite large Muslim minorities).

49. High Representative Inzko's native Austria observes no fewer than ten Christian feast days as public holidays, including St. Stephen's day. The three foreign Constitutional Court judges who

²⁶ *SDA to challenge Republika Srpska entity's name before Constitutional Court*, N1, 23 Jan. 2019.

voted to bar RS Day all come from European countries in which multiple Christian feasts are observed as public holidays.

50. The notion that holidays marking days of special significance to certain religious or ethnic groups is discriminatory finds no support in European law. As a 2013 study by the European Parliament observes, “Several constitutional courts, in dealing with the supposedly discriminatory character of rules establishing Sunday and the most important festivities of the Christian religion as public holidays, have dismissed these cases, holding that a legislative choice as such is not unreasonable, having regard to the religious and historical traditions of each society, and to the fact that these festivities have acquired, over time, a secular meaning.”²⁷

VI. BiH institutions are not meeting their responsibility to keep BiH secure, which seriously increases the risk of terrorism.

A. BiH institutions are failing to effectively address the migrant crisis.

51. The migrant crisis in BiH has been escalating rapidly as the BiH border police have failed to stop migrants from surging into the country. The number of migrants discovered in 2018 was twice as high as that in 2017, and the number discovered in 2017 was twice as high as that in 2016. The rapid growth in the migrants’ numbers is expected to continue in 2019, with the annual total expected to reach 40,000 to 70,000. BiH lacks the resources to deal with migrants in numbers like these.

52. BiH’s ability to respond to the migrant crisis, unfortunately, has been hamstrung by the SDA’s blockade of formation of the new Council of Ministers. Moreover, BiH institutions are failing to sufficiently cooperate with RS institutions to curb the crisis.

53. For BiH, the surge of migrants into the country is a security crisis. Many of the migrants in BiH come from countries in which ISIS and other jihadist groups had many followers. A January study by the BiH Security Ministry found that the leading contributors of migrants are, in order, Pakistan, Iraq, Syria, Morocco, and Algeria. Unsurprisingly, terrorists are entering BiH among the migrants. In February, the BiH Service for Foreigners’ Affairs apprehended five suspected Afghan terrorists.²⁸ But the suspected terrorists detained are certainly not the only jihadists entering BiH among the migrants. Many migrants lack identification, making it impossible to check whether individuals are linked to terrorism or other crimes. The infiltration of terrorists into BiH is especially sensitive because of BiH’s status as a haven for Islamic radicals.

54. On 18 April 2019, the RS National Assembly preliminarily approved legislation for the establishment of an auxiliary police force, which is to eventually comprise about 20 percent of the RS police. The main impetus for the establishment of the new unit is to respond to the migration crisis, including by providing much-needed help to the BiH border police. Because of BiH’s geography, the vast majority of illegal border crossings into BiH take place in Republika Srpska. The new police would be summoned when necessary to deal with a safety challenge like the

²⁷ *Religious practice and observance in the EU member states*, European Parliament Directorate-General for Internal Polices, 2013, at p. 13.

²⁸ *Bosnian authorities apprehend five suspected terrorists among migrants*, N1, 19 Feb. 2019.

migration crisis or a natural disaster. Republika Srpska would welcome the Federation forming its own auxiliary unit to help meet such challenges in its own Entity. RS Interior Minister Dragan Lukac said, "I invite [the Federation] to form an auxiliary unit because I believe that every policeman in streets of Bosnia and Herzegovina will contribute to the safety of our citizens."²⁹

B. BiH institutions are failing to effectively confront jihadists.

55. BiH institutions are failing to treat the threat of radical Islamic terrorism with the seriousness it warrants.

56. The SDA, as detailed in a 2016 RS paper submitted to the UN Security Council,³⁰ over the years has helped turn BiH into a sanctuary for jihadists. Germany's *Der Spiegel* has written, "German investigators believe there are around a dozen places in Bosnia where Salafists -- followers of a hardline Sunni interpretation of Islam -- have assembled radicals undisturbed by the authorities."³¹ In testimony to the UK House of Lords in September 2017, Gen. Michael Rose, former Commander of the UN Protection Force in BiH warned of "a rising element of radicalization" in BiH, "particularly amongst the Muslim communities" and of "jihadists who are coming through and being exported."³² On 11 April 2019, German authorities deported three BiH nationals suspected of plotting terrorist attacks for ISIS.³³

57. The BiH justice system has handed down amazingly lenient sentences—usually involving no prison time—to returned ISIS fighters. As the U.S. State Department wrote in its BiH country report on terrorism in 2018, "Foreign terrorist fighters frequently received sentences below the minimum prescribed by the BiH criminal code, a result of judges taking mitigating circumstances into account. If sentenced to one year or less of incarceration, a convicted terrorist may opt to pay a fine rather than serve time in custody."³⁴ As highlighted in the State Department report, terrorists have been reoffending after the Court of BiH gave them a lenient sentence or failed to imprison them upon sentencing.³⁵

58. Moreover, BiH's SDA-dominated security apparatus is failing to curb the jihadist presence in BiH. As Nenad Pejic of Radio Free Europe/Radio Liberty observed, "There are countless examples of local authorities in Bosnia failing to act properly against Islamic extremism."³⁶

²⁹ *Internal affairs minister: Nobody should be afraid of police*, N1, 18 Apr. 2019.

³⁰ How Bosnia and Herzegovina Has Become a Terrorist Sanctuary, Attachment to [Republika Srpska's 16th Report to the UN Security Council](#), Oct. 2016.

³¹ Walter Mayr, *Sharia Villages: Bosnia's Islamic State Problem*, DER SPIEGEL, 5 Apr. 2016.

³² The testimony is available at <http://www.parliamentlive.tv/Event/Index/a4551237-3e0f-4c02-afbe-8c0cefa94948>.

³³ *Germany departs three Bosnians suspected of plotting terrorist attacks*, N1, 11 Apr. 2019.

³⁴ U.S. Department of State, *Country Reports on Terrorism 2017*, 19 Sept. 2018.

³⁵ *Id.*

³⁶ Nenad Pejic, *Wahhabist Militancy in Bosnia Profits from Local and International Inaction*, JAMESTOWN TERRORISM MONITOR 9, Issue 42, 17 Nov. 2011.

VII. The independent commissions on Sarajevo and Srebrenica are part of the search for historical truth.

59. Republika Srpska has sponsored two independent international commissions to examine and report on evidence of incidents that caused harm and suffering in Sarajevo and Srebrenica during BiH's civil war. The Sarajevo Commission has been established to investigate "the suffering of Serbs in Sarajevo in the period from 1991 to 1995." The Srebrenica Commission has been established to "determine the truth about the suffering of all peoples in and around Srebrenica between 1992 and 1995." Every Serb party of both the governing coalition and the opposition voted last year to establish the new commissions. The two commissions are fully independent and composed of renowned experts from around the world. They operate without interference from RS authorities.

60. The RS Government—like any government—has a natural and legitimate interest in sponsoring research into the facts surrounding important events in its country's history, including its most tragic chapters. Court cases are far from the only source of history about wartime wrongdoing. Historians often provide additional and broader information concerning such events. They may even disagree with a court's analysis without, of course, changing the court's verdict.

61. It is a common and ordinary practice for governments to sponsor commissions inquiring about the facts concerning wars, including about incidents that have been subject to criminal prosecutions. The United States government, for example, in recent decades has sponsored commissions to study the September 11, 2001, attacks, the Abu Ghraib torture and abuse scandal, and U.S. intelligence conclusions concerning weapons of mass destruction that were used to justify the 2003 invasion of Iraq.

62. Discovering and coming to grips with the truth about what happened during war is an important part of post-war reconciliation, and Republika Srpska hopes the commissions on Sarajevo and Srebrenica will help toward this end.

A. The Sarajevo Commission

63. More than 15 years ago, the BiH Human Rights Chamber ordered the Federation Government to establish a commission to investigate and report on the suffering of Serbs in Sarajevo during the period from 1991 to 1995. The Federation Government defied the Human Rights Chamber's order and failed to establish the commission. The Federation's refusal to establish the Commission is all the worse because the systematic and widespread practice of persecution, torture, and murder against Serb citizens of Sarajevo—and concealment of these war crimes—have never been seriously investigated or prosecuted. BiH's top security agency, SIPA, has data showing at least 2,700 Serb victims of war crimes in the territory of the city of Sarajevo that was under the control of the Bosniak army during the war.

64. Republika Srpska has now established the commission that the Federation was ordered to establish but did not. The new Sarajevo Commission is an independent, international commission that will investigate and report on the suffering of Sarajevo's Serbs from 1991 to 1995. It is headed by Rafael Israeli, a professor at the Hebrew University of Jerusalem. The commission also includes experts from the United States, Austria, Italy, Serbia, Ukraine, and France.

B. The Srebrenica Commission

65. The Srebrenica Commission has been established to examine the suffering of all peoples in and around Srebrenica between 1992 and 1995.

66. The commission is not an attempt to deny that large-scale atrocities were committed against Bosniaks in Srebrenica in July 1995. It is, instead, a search for truth about crimes in Srebrenica—regardless of the ethnicity of the victims—during the whole war.

67. The Srebrenica Commission is necessary because a 2004 report adopted by the RS Government was written with pre-determined conclusions, designed to ignore the suffering of Serbs in the area, and adopted under duress. The 2004 Report was prepared according to the dictates of then-High Representative Paddy Ashdown. The report's text documents Ashdown's deep involvement in the report, such as his selection of commission members and his instructions with respect to the report's content.

68. The 2004 Report, for example, politically imposed omission of any reference to the suffering of Serbs. The report acknowledges that the commission conducted no inquiry into the historical background of the crimes committed on 10-19 July 1995, in the Srebrenica area. After describing some of Ashdown's instructions to the commission, the report states, "With this, the mandate of the Commission was directed exclusively towards investigating the fate of Bosniaks in the stated period." This serious omission is one important reason why the new Srebrenica Commission is necessary.

69. In addition, the integrity of 2004 Report itself is suspect because it was prepared and approved under extreme duress during a time in which Ashdown did not hesitate to impose extrajudicial punishments on government officials who failed to act according to his wishes. In 2004 alone, Ashdown summarily banned from public employment and took away other rights from 73 individuals, including high RS officials, and blocked the bank accounts of many others. RS officials responsible for the report were under a real threat of personal ruin if they failed to act as Ashdown demanded. A report prepared and approved under such duress is seriously flawed as an objective, historical record. Its content is based not on independent inquiry but on Ashdown's political directives. Moreover, the report's approval by the RS institutions at that time was a product of Ashdown's will, not the un-coerced decision of such institutions and elected government.

70. Although crimes committed by one side in a war are in no way a legal or moral defense for crimes committed by the other side, the historical fact of widespread atrocities committed against Serbs in the Srebrenica area must not be suppressed. Bosniak forces killed and tortured numerous Serb civilians in the Srebrenica area, including a large number of the elderly, women and children. However, the 2004 report explicitly excluded these war crimes.

71. Excluding the war crimes committed against Serbs in the Srebrenica area implies that they never happened. The exclusion of such crimes was designed by the OHR to strengthen the simplistic narrative that the Serbs were the war's aggressors and Bosniaks its victims. This narrative, unfortunately, has also been imposed by the Bosniak-controlled BiH justice system, thereby denying justice to Serb victims. Extensive reports by RS war crimes investigators

regarding war crimes committed against Serbs have been shelved without action by the BiH Prosecutor's Office. Not a single Bosniak has been convicted of crimes against humanity, and only a handful have been convicted of any type of war crime.

72. The Srebrenica Commission is headed by Israeli historian Gideon Greif, a professor at the University of Texas who is one of the world's leading Holocaust researchers. The commission also includes members from the United States, Japan, Australia, Nigeria, Italy, Serbia, and Germany.

73. Republika Srpska hopes that the new Srebrenica Commission will help clarify the historical record with respect to Srebrenica war crimes and encourage reconciliation among BiH's peoples. Reconciliation among the peoples of BiH requires a just accounting of criminal conduct by all sides during the war. Unlike the 2004 Srebrenica report, the report of the new Srebrenica Commission will not have pre-determined conclusions. As Professor Greif, the head of the Srebrenica Commission said, "it is the commission's moral obligation to be loyal to facts, the truth and the victims." Another member of the Srebrenica Commission, Adenrele Shinaba, said the commission is a step "to reach the truth through objective findings and thus contribute to reconciliation among peoples."

74. Some foreign diplomats and politicians in BiH criticized the new Srebrenica Commission even before it even began its work. They maintained that the truth about Srebrenica is already established because the events of July 1995 have been litigated before courts and tribunals. But litigation does not end the process of historical inquiry. The Srebrenica Commission, moreover, will take a broader view, examining not just the suffering of Bosniaks in July 1995, but the suffering of all peoples in the Srebrenica area during the war. There is no final draft of history, and the report of the Srebrenica Commission will not be the last word on the subject. Instead, it will be an important contribution to the study of the terrible events in Srebrenica during the war.

75. Republika Srpska hopes the two commissions will help create a more comprehensive and accurate historical record about the war and encourage reconciliation between BiH's peoples.

VIII. Republika Srpska is committed to the Dayton Accords and BiH's full sovereignty.

76. Republika Srpska's clear and consistent position is that the BiH Constitution (Annex 4 of the Dayton Accords) must be faithfully implemented. Moreover, it is past time for limitations on BiH's sovereignty—chiefly the Office of the High Representative (OHR) and the presence of foreign judges on the BiH Constitutional Court—to be eliminated.

A. BiH must implement the Dayton Constitution as written and close the OHR.

77. The allocation of governmental competencies and protections for Constituent Peoples established by the Dayton Constitution must be restored and the system of government wisely crafted and guaranteed by the Dayton Accords must no longer be undermined but fully implemented. If the Dayton Constitution is implemented, BiH will have functional governance and a bright and secure future.

78. BiH cannot become a fully sovereign, self-governing country, and an EU member, as long as the High Representative remains in BiH and claims authority to decree laws, constitutional amendments, and punishments completely outside the Dayton constitutional system. As journalist

Srecko Latal observed last year, “Many Western officials . . . turned against the OHR, declaring the very existence of such an organization—which is neither a part of local government structures nor overlooked by any concrete international body—contradicts Bosnia’s intention to join the EU.”³⁷ Full BiH sovereignty is also impossible as long as the High Representative furtively supports the use of BiH institutions to unlawfully advance an agenda to centralize BiH contrary to the Dayton Accords. If BiH is to become a fully sovereign state and an EU member, the High Representative’s presence in BiH must come to an end.

B. The role of foreign judges on the Constitutional Court must end.

79. Another change that must take place for BiH to become fully sovereign is for the foreign judges on the BiH Constitutional Court to be replaced.

80. As Professor Robert Hayden has observed, the role of foreign judges on the Constitutional Court “of course, compromises the sovereignty of Bosnia and Herzegovina, since it gives decision-making powers to people who may not, by constitutional mandate, be citizens of the country.”³⁸ In a recent article about the BiH Constitutional Court, Stefan Graziadei of the University of Antwerp observed: “Even more at odds with national sovereignty is the idea that international judges may sit in national apex courts.”³⁹

81. In private meetings, EU officials have made clear that BiH cannot become an EU member as long as it has foreign judges sitting on its Constitutional Court. As then-EU Enlargement Commissioner Olli Rehn said in a speech to the BiH Parliamentary Assembly in 2009, “there is no way a quasi-protectorate can join the EU.”⁴⁰

82. BiH is the only sovereign state in the world with seats on its constitutional court reserved for foreigners. It is time for participation of foreign judges on the court to end, as should have happened 18 years ago according to the terms of the BiH Constitution.

³⁷ Srecko Latal, *Bosnians Look to Forgotten ‘Governor’ to Avert Crisis*, BALKAN INSIGHT, 15 March 2018.

³⁸ ROBERT M. HAYDEN, *BLUEPRINTS FOR A HOUSE DIVIDED: THE CONSTITUTIONAL LOGIC OF THE YUGOSLAV CONFLICTS* (1999) 131.

³⁹ Stefan Graziadei, *Six models for Reforming the Selection of Judges to the BiH Constitutional Court*, Centre for Southeast European Studies, Working Paper No. 14 (Jan. 2016) at 4.

⁴⁰ Olli Rehn, EU Commissioner for Enlargement, [Towards a European Era for Bosnia and Herzegovina: The Way Ahead](#), Address to Parliament of Bosnia and Herzegovina, 24 July 2009.